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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/607,434	06/26/2003	Mark P. Anstadt	MPA-554	5213
37282	7590	11/30/2005	EXAMINER	
HOWARD J. GREENWALD P.C. 349 W. COMMERCIAL STREET SUITE 2490 EAST ROCHESTER, NY 14445-2408			OROPEZA, FRANCES P	
			ART UNIT	PAPER NUMBER

3766

DATE MAILED: 11/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/607,434	ANSTADT ET AL.	
	Examiner	Art Unit	
	Frances P. Oropeza	3766	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 9/14/05 (Election).
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-242 is/are pending in the application.
- 4a) Of the above claim(s) 1-130, 132, 134-149, 156, 157 and 159-162 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 131, 133, 150-155 and 158 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>11/5/03; 7/24/04; 2/14/05; 2/22/05</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/ Restriction

1. Claims 132, 134-149, 156, 157 and 159-162 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 9/14/05. In the reply the applicant indicated claims 156 and 157 were included in the elected species, however claim 156 relates to embodiment 15 (training the heart) and claim 157 relates to embodiment 16 (assisting in regeneration of the heart) and the Applicant elected embodiment 14 (maintaining heart function constant), hence claims 156 and 157 are withdrawn from consideration.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 151 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 151, the final phrase of the claim “operated by displacement a drive fluid” is not clear.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 3766

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 131, 151-155 and 158 are rejected under 35 U.S.C. 102(b) as being anticipated by Rosenberg et al. (US 5713954). Rosenberg discloses a fluid displacement mechanical ventricular assist apparatus (figure 2) comprising an outer wall, and a controller (23) with algorithm that processes an ECG related to the function of the heart and a hydraulic stroke volume (flow rate) and a hydraulic pressure related to the assist apparatus, and exports a command to control the drive fluid of the apparatus (abstract; fig 2; col. 3 @ 25-50 and 62-67; col. 5 @ 44-63; col. 6 @ 57-62; col. 9 @ 23-27 and 51-60; col. 10 @ 5-10; col. 11 @ 23-31).

As to claim 155, the command instruction maintains the heart constant in that the device is hydraulically actuated in timed relationship to the contractions of a healthy natural heart beat (col. 3 @ 25-36).

5. Claims 131, 133, 150-155 and 158 are rejected under 35 U.S.C. 102(e) as being anticipated by Kung et al (US 6626821). Kung et al. discloses a fluid displacement mechanical ventricular assist apparatus (figs 1, 32; col. 5 @ 59 – col. 6 @ 6; col. 13 @ 28-40) comprising an outer wall, and a controller (122, 529) that receives sensed cardiac information (531) from multiple sensors and synchronizes the pump operation with the ventricles (read to be an algorithm) by exporting commands from the controller (col. 6 @ 6 @ 13-19; col. 13 @ 27-40).

Art Unit: 3766

As to claim 133, the utilization of an assist device by a physician for a particular patient is understood to include not only implantation but also operation of the device, hence the physician defines the parameters utilized in the system to define heart functioning (col. 1 @ 56-60).

As to claims 153 and 154, the controller process pump flow rate and pump pressure related to the assist apparatus (col. 3 @ 58-61; col. 14 @ 10-44; col. 16 @ 1-3; col. 17 @ 59-64).


As to claim 155, the cardiac wrap is flow balanced to adapt to the individual patient needs, hence keeping the function of the heart constant (col. 3 @ 28 – col. 4 @ 7).

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fran Oropeza whose telephone number is (571) 272-4953.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert E. Pezzuto can be reached on (571) 272-6996. The fax phone numbers for the organization where this application or proceeding is assigned is (571) 273-8300 for regular communication and for

After Final communications.


MARK BOOKELMAN
PATENT EXAMINER

Frances P. Oropeza
Patent Examiner
Art Unit 3766


11/25/05